IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2125 of 2007

BHANWAR LAL & ORS.
V/S
STATE & ORS.

Mr. JS BHALERIA for Mr. HS SIDHU, for the appellant / petitioner

Mr. G R GOYAL, for the respondent

Date of Order : 6.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up on the application under Article 226(3) filed on behalf of the newly added respondents.

It is contended by the learned counsel for the petitioner that application under Article 226(3) on behalf of these persons is not maintainable.

From perusal of the order sheets of this writ petition it transpires that a very short question is involved in the writ petition being that the Superintending Engineer passed the order Annexure-2 without hearing the petitioners, and that against this order there was stay by the Irrigation Minister, and that stay has been vacated by oral order. Initially show cause notice was issued on

10.5.2007 but since nobody appeared the writ petition was admitted, and notices were issued.

In my view, in view of this short controversy, the writ petition itself can be disposed of by setting aside Annexure-2, and directing Superintending Engineer to hear the petitioners afresh, and pass a fresh order on merits in accordance with law.

It is contended by the learned counsel for the petitioner at this stage that Superintending Engineer has no jurisdiction to pass the order of the nature like Annexure-2.

It may be clarified that it will be open to the petitioners to raise this contention also before the Superintending Engineer which contention will be examined by the Superintending Engineer on merits, and if the Superintending Engineer finds force in the contention, then he would send the matter to the concerned competent authority who is competent to decide the controversy.

With this, the writ petition is allowed as above. The parties are directed to appear before the Superintending Engineer on 26.11.2007. Interim order passed by this Court on 30.5.2007 shall continue till 5.12.2007, or till the Superintending Engineer passes any fresh order

on the request of the petitioner for stay whichever is earlier.

(N P GUPTA),J.

/Sushil/